

(1984) 11 GUJ CK 0023
In the Gujarat High Court

Alka Ceramics

APPELLANT

Vs

Gujarat State Financial Corporation and Others

RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Public Moneys (Recovery of Dues) Act, 1979 — Section 3, 3(1), 3(2), 3(2)

State Financial Corporations Act, 1951 — Section 29

Citation : (1985) 1. GLR 57

Hon'ble Judges : P.S. Poti, C.J; R.C. Mankad, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—These cases are heard together since the question arising for decision in all these is identical. Certain provisions of Gujarat Public Moneys (Recovery of Dues) Act, 1979 (for the sake of convenience we refer to the Act hereafter, in brief, as "the Recovery Act") are challenged by the petitioners in all these petitions under Article 226 of the Constitution of India. The Recovery Act is passed by the Gujarat Legislature and, as its preamble shows, is an Act enabling speedy recovery of certain classes of dues payable to the State Government, Corporations, Financial Corporations, Companies and nationalised or other banks. The Bill having been reserved for the assent of the President received such assent on 18th May, 1979.

2. Section 3 of Act 17 of 1979 is the main provision in the Act. That enables recovery of certain dues as arrears of land revenue. The procedure for such recovery is prescribed in Sub-sections (1) and (2) of Section 3 and Sub-section (4) bars any suit for recovery of such dues in a civil court. Section 3, particularly Sub-sections (1) and (2) thereof, is under attack in these petitions and the attack is mainly on the ground that it confers arbitrary power of recovery and also on the ground that it goes beyond the legislative competence of the State.

3. The Gujarat State Financial Corporation (in short, "GSFC") is a Financial Corporation for the Gujarat State constituted by the State Government by

notification in the official gazette u/s 3(1) of the State Financial Corporations Act, 1951. The Parliament which has enacted that law envisages establishment of such State Financial Corporations and on such establishment such Corporation would be a body corporate by the name notified under Sub-section (1) of Section 3, having perpetual succession and a common seal, with power, subject to the provisions of the State Financial Corporations Act, to acquire, hold and dispose of property and to sue and be sued, in that name. The authorised capital of such State Financial Corporations is to be made up of fully paid up shares issued to the State Government, Reserve Bank, Development Bank, scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions and other parties the last being not to exceed 25 per cent of the total number of shares.

4. It is the recovery of dues on account of default in payment of the loan advanced by the 1st respondent, the Gujarat State Financial Corporation, to the petitioners that has caused resort by the petitioners to this Court by way of challenge to the recovery process. It may not be necessary to refer to the facts of all the cases. We refer to the facts in Special Civil Application No. 781 of 1981. The petitioner-firm is engaged in manufacture of Ceramics at Piplodi in Himatnagar District. In order to set up the industry and to carry on the business operations the petitioner-firm had approached the 1st respondent corporation and a loan of Rs. 3,67,000/- had been sanctioned to the petitioner-firm as evidenced by letter dated 9th November, 1972, Annexure A. Pursuant thereto relevant documents were executed and a sum of Rs. 1,67,000/- was advanced from time to time. Annexure A sets out the repayment schedule. Admittedly the petitioner was not able to make repayments in accordance with the said schedule. This, according to the petitioner, was on account of the shortfall in production consequent on acute coal shortage.

5. On the petitioner's default to repay a notice was issued by the 1st respondent-Corporation to the petitioner, Annexure B, proposing to take action u/s 29 of the State Financial Corporations Act, 1951. That section enables the Financial Corporation, in case of default, to take over the management or possession, or both, of the industrial concern which is under liability to the Financial Corporation. It further enables the Financial Corporation to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

6. When the petitioner received the abovesaid notice u/s 29 of the State Financial Corporations Act the petitioner proposed repayment in monthly instalments of Rs. 5,000/-. It would appear that the 1st respondent wanted the petitioner to give in writing a proposal in English and according to the petitioner he did submit such a proposal. The petitioner was asked to make the payment of the defaulted amounts in accordance with the schedule, indicated in a letter from the Corporation marked Annexure D in the case. Evidently that schedule was not in accordance with the schedule which the petitioner had presented, but the

petitioner represented to the 1st respondent that he never agreed to such a schedule knowingly, that he had agreed to pay only at the rate of Rs. 5,000/- per month. Evidently this stand of the petitioner did not appeal to the 1st respondent who proposed further action.

7. When thus faced with proceedings u/s 29 of the State Financial Corporations Act the petitioner moved a petition before this Court challenging the vires of Section 29 and this Court issued rule thereon and also directed stay of taking possession from the petitioner.

8. Evidently, faced with such a situation, the 1st respondent-corporation thought of other means of recovery. What it did thereafter was to issue a certificate to the Collector for recovering the dues under the Gujarat Public Moneys (Recovery of Dues) Act, 1979 as if the dues were arrears of land revenue. The petitioner was asked to show cause against the proposed recovery by Annexure G notice and a further notice was given to the petitioner to remain present on 16-3-1981. It is such attempt at recovery through the revenue recovery process that is the subject matter of challenge in this petition. To put it in brief, the case of the petitioner by way of challenge is that in directing recovery of a specified sum by the issue of a certificate the 1st respondent acted illegally in that there has not been an adjudication of the amount due from the petitioner and the 1st respondent has acted as a party and also Judge in his own cause. Section 3(1) which enables issue of a certificate for recovery of dues on the assumption that such amount is due is said to be bad as it enables the Corporation to so act as a Judge in its own cause. It is said to violate Article 14 as the provision does not give room for observance of rules of natural justice. There is no provision for hearing before the issuance of a certificate. If such a provision is not read into the section the provision will have to be held ultra vires. It is also said that the provision in Section 3(2) enabling an opportunity to be given to the defaulter would be of no consequence as nothing remains to be done at the stage and the hearing is of no consequence as it is by an officer of the respondent-corporation. It is further said that Section 3(2) envisages no delegation and that such delegation to the Deputy Collector (Recovery) who has taken proceedings in the case would be a delegation not permissible in law. It is by a subsequent amendment that the question of legislative competence of the State Legislature to pass the impugned law has been urged before us.

9. Though in this and many other cases it is the recovery of money due to the Gujarat State Financial Corporation that is under challenge there are some petitions where such recovery is in respect of dues to the Gujarat Industrial Investment Corporation. Whether such recovery should be permitted will have to be answered identically in both cases since the justification urged for recovery in both cases is identical.

10. In all these cases besides counsel for respective Corporations the learned Advocate General also assisted the Court. Notice had been issued to the Advocate General since vires of the provisions of a State statute was under

challenge. It was in response thereto that the Advocate General appeared and set out the stand of the Government with regard to the impugned provisions and tried to support those provisions as within legislative competence and not vitiated for reason of infringement of Article 14.

11. The points for consideration based on the contentions raised before us may be formulated thus:

(a) Section 3 of the Gujarat Public Moneys (Recovery of Dues) Act, 1979 is beyond the legislative competence of the State Legislature;

(b) Since the provisions of the Act are not retrospective it will not operate to enable recovery thereunder to be made in respect of loans taken prior to the commencement of the Act;

(c) Though Section 3(1) does not in terms provide for giving an opportunity to show cause against the issue of certificate that must be read into Section 3(1) and that would necessitate an enquiry prior to the issue of the certificate;

(d) As an alternative to (c) it is submitted that if Section 3(1) is not so read Section 3(1) must be found to be violative of principles of natural justice and conferring an arbitrary power consequently vitiating the exercise thereunder. It is therefore said that Section 3(1) must be struck down as violating Article 14;

(e) In case Section 3(1) is read as calling for an opportunity to be given before issue of certificate in the absence of necessary guidelines for the exercise of power u/s 3(1) that section must be found to be bad;

(f) Section 3(1) enables the Managing Director of the State Financial Corporation to act as a Judge in his own cause and is therefore upposed to natural justice and the provision must be struck down;

(g) The default referred to in Section 3(1) which enables certificate to be issued is not to be mechanically determined, but is to be limited to a wilful default;

and

(h) The power conferred by Section 3(2) of the Act on the Collector cannot be exercised by the Deputy Collector (Recovery) who has in fact been exercising the power in all these cases.

12. The State Financial Corporations Act, 1951 enacted by the Parliament provided in Section 3(1) for establishing a Financial Corporation for the State and accordingly the Gujarat State Financial Corporation has been established by the State of Gujarat. The powers and functions of such Corporations are defined in the said Act. Such powers include the power u/s 29 of assuming the right of management of the industrial concern and also of exercising the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. There is also a special provision in Section 31(1) of the Act for enforcement of claims by the Financial

Corporation. That is by applying to the District Judge within the limits of whose jurisdiction the industrial concern carries on its business, in that case the Corporation may seek the sale of the property or seek transfer of the management of the industrial concern to the Financial Corporation and also seek an interim injunction restraining the industrial concern from transferring or removing the machinery, plant or equipment from the premises of the industrial concern without the permission of the Board.

Evidently it is not one of these powers that is now sought to be exercised by the Financial Corporation. The power u/s 29 to which we have referred earlier was sought to be exercised. That had been stayed in a writ petition filed in this court. The first of the questions canvassed before us is about the competence of the Gujarat Legislature to enable the revenue recovery process to be invoked to realise the dues of the Gujarat State Financial Corporation. The argument in this behalf is simple. It is said that the State Financial Corporations Act 1951 has been enacted defining the powers and functions of the State Financial Corporations and therefore any incidental power of recovery of dues which is not provided in the Act cannot be provided by a State statute in as much as recovery is incidental and therefore it is only the Parliament that will have power to provide for such recovery. The learned Advocate General has, on the other hand, made a different approach to the question. According to him the Gujarat Public Moneys (Recovery of Dues) Act is not an enactment intended merely for the recovery of dues to the State Financial Corporation, but is a general enactment intended for recovery of dues to State Government, certain financial and development corporations. Government Companies and certain Banking institutions. The purpose of the Act is to provide a speedy means of recovery of certain dues which are to be recovered by these bodies and the object, it is said, is the efficient recycling of such funds of these bodies as are invested in promotional projects, projects intended to promote industry and agriculture. It is said that the social and economic development on a planned basis calls for financial assistance to industrial concerns and that would be possible only if money once invested does not get stuck up somewhere, but flows continuously by an efficient method of recycling. It is to enable this process that speedy recovery is contemplated. It is therefore said that it would be within the State's power to enact the impugned statute. Certain Entries are referred to by the learned Advocate General. To them we will advert.

13. It may be necessary to refer to certain provisions of the Gujarat Public Moneys (Recovery of Dues) Act, 1979 to appreciate the respective cases of the parties. Section 3 is of relevance and therefore we extract the section here:

Section 2(d):

Section 3. Recovery of certain dues as arrears of land revenue. (1) Where any person is a party-

(a) to any agreement relating to a loan, advance or grant given to him or

relating to credit in respect of, or relating to hire purchase of, goods sold to him by the State Government or the Corporation, by way of financial assistance; or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by a bank or a Government Company, as the case may be, under a State sponsored scheme; or

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

(d) to any agreement providing that any money; payable thereunder to the State Government or the Corporation shall be recoverable as arrears of land revenue and such person-

(i) makes any default in payment of the loan or advance of any instalment thereof, or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof, or

(iii) otherwise fails to comply with the terms of the agreement then, in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification in the Official Gazette, in the case of a Corporation or a Government Company, the "Managing Director thereof where there is no Managing Director, the Chairman thereof by Whatever name called and in the case of a bank, the local agent thereof, by whatever name called, may send to the Collector a certificate as early as possible in the prescribed form mentioning the sum due from such person and requesting that such form may be recovered as if it were an arrear of land revenue.

(2) The Collector on receiving the certificate shall after making such inquiries (including giving hearing to the party affected) at he deems fit proceed to recover the amount stated therein as aforesaid as arrears of land revenue.

(3) On recovery of any amount under Sub-section (2), the same shall be paid over to the State Government Corporation, Government Company or as the case may be, bank after deducting, except in the case of amount to be paid to the State Government, such portion of the amount realised, as cost of collection, as the Collector may deem to be reasonable.

(4) No suit for the recovery of any such due as aforesaid shall be in a civil court against any person referred to in Sub-section (1) and no injunction shall be granted by a civil court in respect of any action taken or intended to be taken in pursuance of the right conferred by this section.

It may be necessary to refer to certain definitions. "Industrial concern" is defined in Section 2(f) as having the same meaning as is assigned to that expression in the State Financial Corporations Act, 1951 as in force for the time being

"Industrial undertaking" is defined in Section 2(g) thus:

(g) "Industrial undertaking" includes any undertaking for the manufacture, preservation, storage or processing of goods, or mining or the hotel industry, or the transport of passengers or goods, or the generation or distribution of electricity or any other form of energy, or for the development of any contiguous area of land as an industrial estate.

Explanation - The expression "processing of goods" includes any art or process for producing, preparing or making an article by subjecting any material to a manual, chemical, electrical or any other like operation;

Section 2(1) defines "State-sponsored scheme" thus:

(a) "State-sponsored scheme" means a scheme sponsored or adopted by the State Government or an officer authorised by it in this behalf for development of agriculture or industry and notified as such by the State Government or the authorised officer, by a notification in the Official Gazette for the purposes of this Act.

It may also be necessary to refer to the definition of "financial assistance" in Section 2(d):

(d) "financial assistance" means any kind of financial assistance given-

(i) for establishing expanding, modernising, renovating or running any industrial undertaking; or

(ii) for the purpose of vocational training; or

(iii) for the development of agriculture or agro-industry; or

(iv) for purposes of any other kind of planned development recognised by the State Government; or

(v) for relief against distress caused by fire or serious drought, flood or other natural calamities; or

(vi) for the purpose of carrying out any State sponsored scheme;

(vii) for any other perscribed purpose,

14. It will be evident from a reference to Section 3(1) that the recovery contemplated under the section is not in respect of all dues to the State Government or the Corporation or Bank or a Government Company, but only certain categories of dues. Section 3(1)(a) refers to any agreement by any party relating to a loan, advance or grant given to him. We are concerned in all these cases only with loans. Of course the position is same whether it be an advance or a grant. The agreement may be in respect of or relating to hire-purchase of goods sold to a person by the State Government or the Corporation or it may relate to credit in respect of goods sold by the State Government or the

Corporation. But the significant point is that it applies to such loan, advance or grant by way of financial assistance. In the case of a bank or a Government Company it is such loan, advance or grant under a State sponsored scheme. We are considering here the case of a loan by the State Government or the Corporation. But the significant point is that it applies to such loan, advance on identical reasoning in regard to the other clauses of the section also. To the definition of "financial assistance" we have already made reference. It is not an assistance unrelated to a purpose. The purpose is indicated in the definition. Clause (i) of the definition indicates that the financial assistance is for establishing, expanding, modernising, renovating or running any industrial undertaking and for similar other purposes as are mentioned in other clauses. We are concerned really in most of these cases with Clause (i), for they all relate to matters covered by Clause (i). Evidently the object of the financial assistance rendered by the State Government or Corporation in agreeing to give a loan is to enable the party concerned to establish, expand, modernise, renovate or run any industrial undertaking. It may be useful to refer to the statement of objects and reasons of the Bill. That reads thus:

STATEMENT OF OBJECTS AND REASONS.

Commercial banks as well as State Financial institutions which play an important role in financing the weaker sections of the community for carrying on productive efforts are faced with the difficult problem of realising the money advanced to various persons in various areas. Recourse to ordinary course, takes considerable time. The State Government is embarking on a big way to increase employment by encouraging productive efforts in various fields in industry and agriculture. Naturally, therefore, institutional financing, requires to be mobilised speedily for the economic development of the State. To achieve this object, this Bill seeks to provide for certain dues payable to the State Government, the State Financial Corporation and other corporations owned or controlled by the State Government to be recovered speedily and also as arrears of land revenue.

The following notes on clauses explain in brief the important provisions of this Bill:

Clause 2.- This clause contains definitions of terms used in the Bill.

Clause 3.- This clause provides for recovery of certain dues of the banks and financial institutions as arrears of land revenue.

Clause 4.- This clause is a saving clause safeguarding the interest of State Government, Gujarat State Financial Corporation, Government Company and bank as defined in the Bill. It also stipulates the procedure to be followed in realising the dues as arrears of land revenue.

Clause 5.- This clause seeks to ensure that other existing remedies open to bank are not taken away.

Clause 6.- This clause empowers the State Government to make rules.

Clause 7.- This clause makes certain transitory provisions as to pending suits in Civil Courts.

It is evident therefore that realising the need for increasing employment opportunities by encouraging productive efforts in various fields of industry and agriculture the Government felt that institutional financing required to be mobilised speedily for the economic development of the State. Such a speedy mobilisation of funds would be possible by a process of recovery of dues from those to whom money had been advanced by these financial institutions. Recourse to ordinary methods of recovery may not be effective enough, considering the need for speed. The process of revenue recovery was envisaged in respect of such dues. The economic and social planning calls for adoption of various measures by the State and these include measures in regard to promotion of industry and agriculture. It is in furtherance of such objective that the State Legislature evidently envisaged a statute which would enable certain dues of certain financial institutions and of the State Government to be realised effectively and efficiently. That is the background of the legislation. We should consider the question of legislative competence keeping this in mind.

15. Before we consider the question independently it may be useful to consider the decisions of the Madras and Kamataka High Courts which had considered similar provisions in similar statutes. The Karnataka High Court in *M.A. Kamath v. Karnataka State Financial Corporation* AIR 1981 Karn 193 , dealt with a similar plea by way of challenge to Section 3 of the Kamataka, Public Moneys (Recovery of Dues) Act (16 of 1980). It upheld the provision as valid. The Madras High Court in *G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd.*, on the contrary, while dealing with a similar provision in the Tamil Nadu Revenue Recovery Act struck down the provision as ultra vires of the powers of the Tamil Nadu Legislature. Naturally the State relies on the Karnataka decision while the petitioners in these cases rely on the Madras decision. Let us first consider the approach to the question by the Karnataka High Court.

16. That the various Entries in the three lists of the Seventh Schedule do not define powers of legislation, but only enumerate the fields of legislation is well settled. It is Article 246 of the Constitution that confers the power to legislate. The Entries in the three Lists in the Seventh Schedule delineate the various fields in which each of the Legislatures would be competent to make enacting exercise.

17. Section 3 of the Karnataka Public Moneys (Recovery of Dues) Act is more or less in the same form as Section 3 with which we are concerned here. It was contended in that case also, as contended before us, that in view of the State Financial Corporations Act, 1951 making provision for the recovery of loans, it was not competent for the State Legislature to legislate on the same subject. In support of the legislative power of the State the counsel for the State: Government in that case relied on Entry 43 in List II. That entry reads "Public Debt of the State". That plea was not accepted by the court. Naturally so for what is sought to be recovered is not any public debt, but dues arising from

loans advanced by the State or State Corporations. Public debt of the State is what is owed by the State and not what is owed to it. Reliance was then placed by the State Government in that case on Entry 43 of List III, that is "recovery in a State of claims in respect of taxes and other public demands, including arrears, of land-revenue and sums recoverable as such arrears, arising outside that State". Having referred to this Entry the Court proceeds to observe:

16. Thus, the subject of recovery in a state of claims in respect of taxes and other public demands falls under Entry No. 43 in List 311 (Concurrent List) of the Seventh Schedule of the Constitution of India. It is in the Concurrent List. It is, therefore, obvious that the State could legislate for the recovery of claims in respect of public demands. The recovery of the sums in question obviously relates to public demands. The recovery of loans due that are spoken of in Section 3 of the Karnataka Act all fall within the terms "Public Demands". They are dues relating to State Government, Corporation, or a Government Company. It is made clear in the Central Act in Section 4(3) that the State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among-

(a) the State Government,

(b) the Reserve Bank,

(ba) the Development Bank

(c) scheduled banks, insurance companies, including the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956, Investment trusts, co-operative banks or other financial institutions, and

(d) parties other than those referred to in Clauses (a), (b), (ba) and (c) : Provided that the number of shares which may be allocated to the parties referred to in Clause (d) shall in no case exceed twenty-five per cent, of the total number of shares.

Thus, it is obvious that demand by State Financial Corporation established under the Central Act is a Public Demand. Therefore, it is obvious that the State Legislature has competence to legislate the Karnataka Act under Entry No. 43 in List III of the Seventh schedule".

We are afraid we must express our disagreement with this approach. The question whether the dues relating to the State Government, Corporations or Government Companies could fall within the term "Public Demands" is controversial, but we need not go into it here. Without expressing any view on it it is sufficient to express our view, in respectful disagreement with the Karnataka view, that Entry 43 will not have application to the case since that relates only to claims arising outside the State. The case before the court, as the case before us, was one not of claims arising outside the State and obviously therefore there is no justification to refer to that Entry. Evidently the object of that Entry is to provide for cases where State may want to make a legislation enabling is to

provide for cases where State may want to make a legislation enabling it to recover arrears of land-revenue, taxes and other public demands not arising within the State. In respect of taxes which arise within the State the enactments concerned would themselves make provision for recovery within the State, but not so in respect of taxes or other public demands arising outside the State. To the extent recovery may have to be made in a State where the tax or other public demand has not arisen provision is made in the concurrent list to enable the State to exercise itself in that behalf, if need be. That has no relevance to a case where the recovery is of dues arising within the State. Evidently therefore Entry 43 of List III is out. The decision of the Karnataka High Court is of no assistance to the State.

18. Now let us consider the decision of the High Court of Madras in *G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd.*, Section 52A of the Tamil Nadu Revenue Recovery Act enabled the Tamil Nadu Agro-Industries Corporation Limited and such other Corporations as were to be notified by the State Government to recover all sums due in the same manner as arrears of land revenue under the provisions of the Act. It was contended that this provision was incompetent and the State Legislature could not enact Section 52A. The case of the learned Advocate General who appeared for the State was that Entries 3, 43 and 45 of List II and Entry 43 of List III taken together conferred competency on the State Legislature to enact the section in question. This was examined by the Court. Before we notice such examination it is useful to advert to the scheme and background of Section 52A of the Tamil Nadu Revenue Recovery Act which was under challenge in that case. That enabled recovery of sums due to the Tamil Nadu Agro-Industries Corporation or such other Corporation as may be notified in that behalf by the State Government to recover its dues in the same manner as arrears of land revenue. After examining the scheme of the relevant provisions, the Court observed with reference to it in paragraph 7 of its judgment thus:

It has been accepted on all hands that the procedures provided for in the Act are drastic and summary and that the said procedure has been provided only for the purpose of speedy recovery of the land revenue payable to the Government since the Government require the same for carrying on their administration.

(Emphasis supplied)

The court proceeded to say:

It is against the background of these provisions contained in the Act, we have to consider the question as to the validity of Section 52A.

We have adverted to this passage at the outset because we have, in the earlier part of this judgment, referred to the scheme of the provision under challenge here, its background, purpose and object and that would indicate that the scheme under the Recovery Act is essentially different and the purposes for which powers are conferred under the Act are wider. This may be relevant in

appreciating the scope of consideration of the application of the various Entries in the three Lists of the Seventh Schedule.

19. Though four Entries were relied on by the Advocate General in support of the plea of constitutionality of the impugned provision in the Madras case it appears from the judgment that the learned Advocate General practically gave up the plea in regard to three of these Entries, namely Entries 3 and 43 of List II and Entry 43 of List III and confined himself to Entry 45 of List II.

Entry 3 of List II reads thus:

Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court.

On the face of it, it is difficult to say that any provision for invoking the revenue recovery process could fall within the scope of the entry relating to administration of justice or constitution and organisation of courts. Even so such an argument was raised in the Madras case by the Advocate General only because in *N.C. Mukherjee and Co. Vs. Union of India (UOI)*, similar challenge was made to the provision relating to recovery, as arrear of land revenue under the Bengal Public Demands Recovery Act (3 of 1913) read with the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act 11 of 1961, of excess profits tax due under the Excess Profits Tax Act, 1940. The learned Judges of the Madras High Court considered the Bengal Act in elaborate detail to find that the provisions in the Act impugned, in that case had no parallel at all to the provision in Section 52A of the Tamil Nadu Act. That was because that Act envisaged an elaborate procedure with regard to recovery which was different from the summary procedure of the revenue recovery process and which was more akin to adjudication in a court of law. The provisions indicated that all the trappings of a court were present in the machinery contemplated under the Bengal Act. By Section 48 every Collector and Certificate Officer acting in discharge of functions under the Bengal Act was deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 and by section 49 they were to have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, and enforcing attendance of witnesses and compelling production of documents. By the provision in the Act the Officer concerned was under a duty to decide the matter before him on a consideration of the evidence adduced and in accordance with law. We are not going into this question further only because of the rather elaborate consideration of this by the Madras High Court with which consideration we are in entire agreement. As rightly noticed by the Madras High Court it is those relevant provisions in that Act which enabled Entry 3 to be applied. A provision like Section 52A which is more or less on a par with the provision with which we are concerned here evinces a different scheme. As we have noticed about Entry 43 of List II earlier when dealing with the Kamataka decision, the Madras High Court also took the view

that "public debt" mentioned in Entry 43 List II of the Seventh Schedule connotes only the borrowing by the Government from the public and does not take in any amount payable by the public to the Government. Evidently it appears from the judgment of the Madras High Court that the Advocate General himself realised that the expression "public debt of the State" has a meaning of its own as referred to in, Public Debt Act referred to by the learned Judges in that judgment and he did not therefore pursue the matter.

20. Now we will refer to Entry 43 in List HI of the Constitution to which also we have adverted. The view which we have expressed here was taken by the Calcutta High Court in the decision to which we have adverted earlier N.C. Mukherjee and Co. Vs. Union of India (UOI), and that view found acceptance by the Madras High Court. The Madras High Court concluded:

Having regard to the express language of Entry 43 of List III, namely, recovery in a State of claims arising outside that State, and the decision of the Calcutta High Court referred to above, the learned Advocate General did not rely upon this Entry also, to support the competency of the Tamil Nadu Legislature to enact Section 52-A of the Act.

21. Now we will go to Entry 45 of List II of the Seventh Schedule which was the main Entry relied on before the Madras High Court by the Advocate General. That Entry reads:

Land Revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

This Entry corresponds to Entry 39 of List II of the Seventh Schedule to the Government of India Act, 1935 and is in identical terms. The expression "land revenue" is a well understood expression and in its plain sense cannot refer to any other revenue including any public dues other than land revenue.

It is only by virtue of statutes which either deem public dues to be treated as land revenue or enable such public dues to be recovered as if they were land revenue that the process for recovering land revenue is invoked in cases for recovery of public dues. Otherwise any dues to the Government other than by way of land revenue would, not be recoverable by applying the recovery process concerning Land Revenue. A reading of the Entry as a whole indicates that it relates to land revenue including assessment and collection of revenue and also matters such as maintenance of land records and survey for revenue purposes. The emphasis is upon land and matters arising out of rights and obligations in respect of such land and there is no reference either expressly or by implication to any other dues to the State Government, let alone to any other dues to the State Corporations as noticed by the Madras High Court in the decision adverted:

While interpreting the entries, it is the duty of the Court to interpret them in their plain, natural and grammatical meaning and read them in their fullest and widest

amplitude so as to extend their scope to all ancillary and subsidiary matters which can reasonably and fairly be comprehended in them.

Read so it is not possible to bring the impugned provision, namely Section 3 of the Recovery Act within the scope of the Entry "land revenue" as was the case with Section 52A of the Madras Act in the Madras decision. In fact the recovery u/s 3 of the Recovery Act has nothing to do with land revenue. The Act itself is not intended to recover land revenue, but what is intended is to recover dues of a different character which character is evidenced by the definition of the term "financial assistance". It was rightly held by the Madras High Court that Entry 45 of List II would not apply to the similar provision in Section 52A. We agree.

22. If before us reliance by the learned Advocate General was only on those Entries which were relied on in the Madras case we would have no hesitation in agreeing with the Madras view on validity. If we had no occasion to examine any other Entry with a view to sustain the impugned provision we would have perhaps agreed with the Madras view. But in this case we have gone through the whole gamut of Entries with a view to see whether the impugned provision can be sustained with reference to any Entry in List II as well as List III. It is in that context that the background of the provision impugned here becomes relevant. The object with which the provision was enacted must have significance because it would be that which would enable a proper identification or location of the Entry within which the impugned provision of the legislation would fall. Hence we will proceed to examine the other Entries in Lists II and III which may have relevance in considering the constitutionality of Section 3 of the Recovery Act.

23. Apart from the Entries to which we have already made reference the only other Entries which call for consideration in the context of the contention raised in these cases are:

List II - Entry 14 : Agriculture, including agricultural education, and research, protection against pests and prevention of plant diseases; Entry 24 : Industries subject to the provisions of Entries 7 and 52 of List I: Entry 30 : Money-lending and money-renders; relief of agricultural indebtedness; List III - Entry 20 : Economic and social planning.

We may notice that the Recovery Act has received the assent of the President and therefore it would be a valid exercise; by the State Legislature even if the enactment fell within the field of Entry 20 in List III. Economic and social planning in the States is a matter in regard, to which the Parliament as well as the State Legislature could legislate subject, in the latter case, to the other procedural requirements of the Constitution. It was envisaged in the Constitution that a country like India which had just freed itself from foreign domination for a long period and had necessarily to meet problems of poverty of the masses of this country required to plan in order to secure social and economic progress to its citizens particularly to the weaker sections. Social and economic planning was a matter of priority and appropriate legislation in that behalf not only passed but

also effectively enforced was necessary to direct the State to the goal set by the Constitution. This planning required exercise in several spheres including that of agriculture and industries which are items enumerated in the State List. We have already adverted to the background of the Recovery Act and the purpose and object with which it was enacted. As we have indicated it is not an Act enabling any and everyone of the dues to the State Government or the Corporation or a bank or a Government Company to be recovered by invoking that Act. It is only certain categories of dues that are brought within this Act. This is of considerable significance and would underline the idea that the Act is not intended as an Act for recovery of dues to State Government or Corporations, but one intended in respect of only such dues as would justify bringing them within the provisions of the Act. It is in that context that we considered that in respect of any agreement relating to a loan by the State Government or Corporation it is only such loans as are by way of financial assistance that would fall within Section 3(1)(a). Financial assistance has a significance of its own for the purpose of this Act, that having been defined in Section 2(d). That definition highlights the character of the assistance given by way of loan. It is not for any and every purpose, but only for the specified purposes. The need for providing speedy recovery of dues to the State Government or Corporations is justifiable particularly in the scheme of the Recovery Act as a scheme intended to recycle the funds of the State Government or the Corporation to developmental purposes indicated in the Act so that the funds will not become stagnant, but available for a continuing set of persons who are in need of assistance. This is evidently a part of planning. It is evidently a scheme to channelise the economic resources provided by the State Government or the Corporation by way of financial assistance to developmental schemes of the particular character envisaged in the Act. The preamble of the Act as well as the whole scheme of the Act is eloquent in indicating that it is a measure required for our developing economy. Therefore we are of the view that the scheme would squarely fall within Entry 20 of List III - economic and social planning. The planning concerns agriculture as well as industry which are enumerated in List II and therefore these Entries would also support the legislative competency of the State Legislature to pass the impugned legislation. We do not think that Entry 30 will have relevance because though prima facie one may be tempted to say that the said Entry being one relating to money-lending and money lenders and the financial institutions being money-lending institutions the legislation may fall within that Entry. Financial institutions are concerned with money-lending but perhaps had the case of the State been merely; based upon. Entry 30 in List II we might not have been inclined to uphold the validity of the impugned provision. That would be the case because, no doubt if the pith and substance of the legislation is money lending and provisions as to recovery are incidental thereto, the Act would be within the scope of Entry 30 of List II, but the Recovery Act is not one dealing with money lending and incidentally with recovery. It is purely an enactment concerning recovery and not recovery of any money lent, but money lent only by the Government. Corporations, certain banks and Government Companies and that

too only certain categories of loans. Therefore, the Recovery Act would not fall really within the scope of the Entry "money-lending" and the legislation therefore cannot be supported on the basis of Entry 30 of List 11.

24. We have to deal with a contention raised before us that a Central Act having entirely covered the field the State Legislature would be incompetent to trespass upon the field and for that reason legislation would be incompetent. Article 246(1) of the Constitution confers exclusive power on the Parliament to make laws with respect to any of the matters enumerated in List I while similar exclusive power is conferred on the Legislature of any State in regard to matters enumerated in List II of the Seventh Schedule. In regard to matters enumerated in List III the concurrent power of the State to make laws is subject to Article 254 of the Constitution which makes any law made by the legislature of a State in regard to matters enumerated in List III inoperative in the face of a repugnant provision in the law made by the Parliament which Parliament is competent to enact. Such repugnant provision could still be saved in regard to earlier law made by the Parliament or an existing law if the concerned law had been reserved for consideration of the President and had received his assent.

25. The question may perhaps arise whether the impugned legislation falls within List I and not List III. The Entries are mutually exclusive. But in reading the Entries one has to consider them as having the widest amplitude, amplitude sufficient to cover not only matters enumerated in the Entries, but those which are incidental to such matters. It is therefore argued for the petitioners that the powers of recovery of dues to State Financial Corporations cannot be considered as falling within Entry 30 of List III but must be found to fall within Entry 43 of List I which Entry reads:

Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

It is said that the Parliament has power to pass a law providing for constitution of State Financial Corporations as it was done by the State Financial Corporations Act, 1951. The State Financial Corporations conceived thereunder are financing bodies. It is also open to the Parliament in exercise of the power covered by this field of entry to legislate on incidental matters such as recovery of dues by such State Financial Corporations. The subject matter of the Recovery Act is therefore, according to the petitioners, a matter squarely falling within Entry 43 of List I and if so it cannot fall within any other Entry in List II or List III. If it does not fall within List III question, of the President having assented is of no relevance, for such assent, would be valid only in regard to a statute passed by a State Legislature in respect of a matter covered by concurrent list. The argument at first sight is no doubt attractive, but a closer examination would indicate that while no doubt recovery of dues of all State Financial Corporations could be provided for under the State Financial Corporations Act as that would only be an exercise incidental to the exercise of a power in respect of a field falling under

Entry 43 of List I the scope of the Recovery Act goes far beyond this. It is not an enactment concerned with recovery of dues to State Financial Corporations only. It is of larger amplitude. It conceives of recoveries of dues to the State Government, the State Financial Corporations, banks and Government Companies. Again it does not cover all categories of dues to the State Financial Corporations and the other bodies. Only dues which are of certain categories enumerated would be covered by the Act and therefore the Act has an independent existence and is not a measure merely for recovery of dues to State Financial Corporations. Its purpose being speedier recovery of certain categories of dues and that for a definite objective, which objective gives a separate identity to it, whether the legislation would be justifiable with reference to Entry 20 of List 3 is to be answered from this perspective.

26. India is predominantly an agricultural country and a good part of the weaker sections of the people are in the villages. To provide employment for them as well as to meet the demand for food for a population of 700 million, rapid advancement in agriculture is called for in this country. Over the years there has been considerable development in agriculture resulting today in an annual production of 150 million tonnes of food grains. But this is not the best performance and much more development must result from, our planning. So is the case with industries. Among the industrialised nations of the world India has been able to advance to the 10th rank and the performance in the industrial sector has necessarily been due to the development schemes envisaged over the years. Even so much more remains in the field of social and economic planning, social uplift of the people who have little opportunity to share in the gains of the country and removal of economic disparities which persists. Despite all the industrial and agricultural development the reduction of disparities in income, which still remains to be attended to is a tremendous task. Every possible effort has to be mobilised in that direction and everything planned towards that end would have a directive and purpose. Of course the best judges as to how such planning is to be done are the administrators at the State and the Central level. If they envisage a legislation and carry it out for developmental purposes for improving the conditions of our industry and agriculture it is not for the court to sit in judgment over it and to decide whether such planning could be achieved by other means and the means adopted could be avoided. We therefore feel that the scheme envisaged in the Recovery Act is a scheme which has close nexus to social and economic planning and if so it is a legislation which is referable to Entry 20 of List III.

27. Several cases arose before the Supreme Court where challenge had been made to special procedures applying to the State and Municipal Corporations. In Baburao Shantaram More Vs. The Bombay Housing Board and Another, the Supreme Court upheld the exemption of premises belonging to the Government or a local authority from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In The Collector of Malabar, Kozhikode and Another Vs. Erimal Ebrahim Hajee, the Supreme Court upheld the provision for

special modes of recovery for income tax. In *Manna Lal and Another Vs. Collector of Jhalawar and Others*, the Court similarly upheld the provisions of the Rajasthan Public Demands Recovery Act, 1952 for recovering moneys due to a State Bank. A special period of limitation for the Government was upheld in *Nav Rattanmal v. State of Rajasthan* AIR 1961 S.C. 170. Setting up of separate authorities for determination of dues and prescribing a special procedure to be followed by them for recovery of the dues of a State Bank was upheld in *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, The doctrine of priority of Crown Debts was upheld by the Supreme Court in *Builders Supply Corporation. v. Union of India* AIR 1965 S.C. Considering the case law on this question the Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, held:

It cannot now be contended that special provision, of law applying to that it offends Article 14.

Government and public bodies is not Based upon reasonable classification or

28. Holding that provision for speedy recovery is in public interest, in the minority judgment, *Bachawat, J*" in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, speaking for himself and *Hidayatullah, J.*, makes reference to the decisions on the Revenue Recovery Acts and other Acts creating special tribunals and it is noticed that it is well settled that the procedure for the expeditious recovery of revenue and State dues are in public interest. The learned Judge proceeds to state in paragraph 20 of the dissenting judgment thus:

If quick recovery of revenue is in the public interest expeditious recovery of State property from which revenue is derived is a fortiori in the public interest. The impugned Act has properly devised a special machinery for the speedy recovery of premises belonging to the Government.

The challenge there was to the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. The majority judgment declared the Act to be void.

29. No doubt both the majority and minority views have not received approval from the Supreme Court in the later decision of a Constitution Bench of the Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, but we are referring to the observations of *Bachawat, J.* only to indicate that it has been more or less well settled that provision for speedy recovery of State dues may not be objectionable, for unlike dues to an individual, dues to the State, or for that matter the State Corporations, stand as a class by themselves as the purpose of such recovery may be to promote the interests of the public. Here we have express indication even of the specific objective with which the enactment has been passed by the State Legislature.

30. To determine whether a statute could fall within one or other of the Entries the relevant test is to examine the pith and substance of the enactment, vide AIR 1941 47 (Federal Court) Prafulla Kumar v. Bank of Commerce Ltd. Khulna AIR 1947 P.C. 60 , The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, and R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, Gwyer C.J., in AIR 1941 47 (Federal Court)

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also one a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invaiied because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that.

The Privy Council in Prafulla Kumar v. Bank of Commerce Ltd. Khulna AIR 1947 P.C. 60 , expressly approved this dictum. The Supreme Court has also expressed the same view in many decisions. In The State of Rajasthan Vs. G. Chawla and Dr. Pohumal, the Supreme Court said in paragraph 8:

After the dictum of Lord Selborne in Queen-Empress v. Burah (1878) 3 A.C. 889, oft-quoted and applied, it must be held as settled that the legislatures in our Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists. It is necessary to examine the impugned legislation in its pith, and substance, and only if that pith and substance fails substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding.

31. Keeping the above principles in view we have to examine the scope of the Recovery Act. No doubt evidently it deals with a matter concerning recovery of dues to the State Government, State Corporations, banks and Government Companies and therefore deals also with recovery of dues to State Financial Corporations. Recovery provisions are incorporated in the State Financial Corporations Act passed by the Parliament. The provision in the Recovery Act is intended for a different purpose, that of providing a procedure by which there is quick and speedy recovery of dues not only to the State Financial Corporations, but to other bodies with a view to promote the general interest of the public, that interest being that of promoting the implementation of the developmental

schemes by way of financial assistance. In other words, though recovery may appear to be intended to collect money for the State Government or the Corporations, the real objective is to recirculate the money due to the Government or the Corporations to make it available on a larger scale with a particular purpose or object in view. Therefore, the pith and substance of the legislation would justify it as falling within the field of legislation envisaged in Entry 20 of List III. Hence we find no legislative incompetency in the impugned provision.

32. Now we will come to the next point. The contention urged by the petitioners is that the provisions of the Act being not retrospective they will not operate to enable recovery thereunder to be made in respect of loans taken prior to the commencement of the Act. It is a well established rule that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective. The intention of the Legislature has to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, This is because vested rights cannot be divested unless it is so provided by a statute. If therefore some right is vested any legislation on the subject will not take away such right unless the statute expressly or by necessary implication indicates that intention. It is not a question of competency of the Legislature, for if it could legislate on a subject it could do so prospectively as well as retrospectively. It is a question of finding out the intention of the Legislature. Normally if some right has been vested in a person the Legislature, unless it indicates so, will not be presumed to intend to take it away by legislation and that is why we look to the intention of the Legislature whether it does in a given case indicate that intention. But procedural law by its very nature must be different. Procedure is intended to give effect to or implement a right and that would apply irrespective of whether a part of the requisites for its action is drawn from a moment of time prior to its passing *Kapur Chand Jain Vs. B.S. Grewal and Others*, In one sense procedural law is always only prospective in the sense the procedure operates after the commencement of the Act, but it is said to act retrospectively only because it operated upon the rights of parties in existence and not rights which are created thereafter so as to implement or effectuate such rights. It is in that sense that procedural statutes are said to be retroactive. A process of recovery of revenue in respect of a loan granted to a party is intended to give effect to the right to such recovery, cause of action for such recovery having arisen. Just as a suit for recovery in a civil court is a matter of a procedure proceeding for adjudication u/s 3(2) of the Recovery Act and recovery of the dues is also in the realms of procedure and such procedure would operate on all rights irrespective of whether they arise out of transactions entered into earlier or only after the enactment. It is settled law that no person has a vested right in any course of procedure. If the matter be one of procedure.

then it is not necessary that there should be a special provision to indicate that the new procedural law is retrospective.

vide: union of india (UOI) Vs. Sukumar Pyne, We have no hesitation in rejecting the plea that Section 3(2) cannot operate in respect of loans already taken.

33. Now we will advert to points (c) and (d) urged by the petitioners here. The contention is that even assuming that the provision in Section 3 of the Recovery Act is valid it must be found that Section 3(1), though in terms, does not provide for hearing a party before sending a certificate to the Collector either that requirement must be read into the section as a requirement of principles of natural justice or in the alternative the section must be struck down as conferring an arbitrary power. A proper understanding of the scheme of Section 3 would be the answer to this contention. It is true that Section 3(1) enables the specified authority of the Corporation to send a certificate to the Collector in the prescribed form mentioning the sum due from such person and requesting that such sum may be recovered as if it were an arrear of land revenue. If the Collector was merely to act upon this certificate without giving an opportunity and without adjudicating on it could perhaps be said that the section is bad for at no time does the party get an occasion to say that the amount mentioned in the certificate is not due from him or that his liability has not arisen for certain reasons. He must have an opportunity to answer the claim for recovery at some stage prior to such recovery. It need not necessarily be before a certificate is issued by the concerned authority of the Corporation. In fact it goes against the very contention raised by the petitioners in some of the petitions that the Managing Director or if there is no Managing Director the Chairman being the authority to send the Certificate he would not be competent to hear and dispose of the matter of objections by an alleged defaulter as he would be a Judge in his own cause. Perhaps it is to meet such a possible objection that provision has been made in the Act to enable adjudication of any such dispute by an independent authority, namely the Collector. That is the provision in Sub-section (2). Just as a person who has a claim in a civil matter approaches a Civil Court with a plaint whereupon the court adjudicates, the State Corporation approaches the Collector with a certificate whereupon the Collector issues notice and adjudicates. The learned Advocate General appearing for the State freely conceded that the function of the Collector under Sub-section (2) of Section 3 is to consider and dispose of the objections, if any, raised by those to whom he is bound under the sub-section, to give notice and that it is only on such adjudication of such claims that proceedings for recovery of the amount certified as arrears of land revenue are to be taken. May be that the objector is able to satisfy the Collector that the amount certified is not due or that the amount has not become payable as there is no default or for other similar good reason the amount mentioned in the certificate cannot be recovered. The section refers to the Collector making enquiries as he deems fit which does not give power to the Collector not to make an enquiry when such enquiry is called for. It obliges him to make an enquiry appropriate to the situation depending upon the nature of

the contention raised. He may have to call for details from the Corporation, he may have to verify them and he may have to satisfy himself whether there is any substance in the objection. If so, he has necessarily to pass an order and communicate it to the parties, so that the parties may know what the decision is before he proceeds to recover the amount stated in the certificate or lesser amount as he finds to be recoverable. If we construe Sub-section (2) in this manner we find no difficulty to construe it so particularly in the light of the very definite stand taken; by the Advocate General then the question of need for notice prior to the issue of the certificate u/s 3(1) or the invalidity of such certificate does not arise at all.

34. In view of what we have said the contention raised that the absence of necessary guidelines for the exercise of power u/s 3(1) renders the provision bad cannot be sustained. Section 3(1) enables the concerned authority, when he finds that on the basis of the records amount is due from the party, to issue such a certificate and the adjudication is to be thereafter, u/s 3(2). The point raised as (f), namely that the Managing Director would be acting as a Judge in his own cause in issuing the certificate u/s 3(1) does not therefore remain for consideration.

35. Point (g) is that the default referred to in Section 3(1) is not to be mechanically determined, but is to be limited to wilful defaults. The argument, as elaborated at the Bar, is that it is not every default that would attract the provision for revenue recovery, but only defaults in cases where though a party is willing to pay, he is unable to pay for want of funds. In support of this it is pointed out that the very purpose of advancing a loan for industrial or agricultural purposes is to promote such industry or agriculture and when, due to circumstances beyond the control of the debtor, he is unable to pay if recovery proceedings are taken, that would be counter-productive in that such proceedings may serve to smother the industry at its infant stage. We should assume that schemes for financial assistance which envisage repayment according to the usual schedule would take into account the circumstances relating to the capacity of the debtors to repay. Individual cases should not change the situation, for, to say that if a person is unable to pay he need not repay, is likely to lead to general abuse. It cannot be contended by a party who under a contract agrees to repay a loan that he is unable to pay and therefore no liability should be imposed on him when for default of the terms of the contract resort is made to the Civil Court by way of a suit for recovery. If that would be no defence in a civil court why should it be a defence for a recovery? May be individual cases may arise where parties are unable to pay for no fault of theirs. The industry might have failed and perhaps a little time given to them may be able to revive the industry. But that is a matter for negotiation. There is nothing in the Act, either express or implied which obliges us to read into the Act the requirement of inability to pay being an answer to the claim for recovery. Hence we do not appreciate this contention urged before us much less the contention that the condition precedent for issuing certificate is not only the satisfaction that

the debtor has defaulted but that being able to pay he is withholding payment.

36. The last of the grounds urged by way of attack to the proceedings for recovery is that Section 3(2) enables only the Collector to receive the certificate to make such enquiries as he deems fit and to proceed to recover the amount stated in the certificate, but the exercise is generally made by Deputy (Collector (Recovery)) and this is not competent. This is a contention which calls for close examination.

37. It is stated in paragraph 5 of the additional affidavit-in-reply by Shri P.M. Rathod, Manager (Law) of the Gujarat State Financial Corporation filed on 25th of July, 1984 that the Deputy Collector (Recoveries) has been empowered by the State Government by notification dated 1-10-1980 to take action for the purpose of recovery of the dues financed by Gujarat State Financial Corporation, Ahmedabad as arrears of land revenue. A copy of the notification is produced along with that affidavit as Annexure "I". For the sake of convenience we will extract that notification here:

GUJ. Govt. Gaz. October 23, 1980/Kartika 1, 1902 Notification Sachivalaya, Gandhinagar, 1st Oct. 1980 The Bombay Land Revenue Code, 1879.

No. GHM-80-270-M-PWR-2180-94126-L

In exercise of the powers conferred by Section 19 of Bombay Land Revenue Code 1879 (Act V of 1879) Government of Gujarat hereby confers upon the Deputy Collector (Recovery)" all the powers and duties of the Collector under the said Code, except the powers in Section 153 and 157 for the purpose of recovery of the dues financed by Gujarat State Financial Corporation, Ahmedabad as arrears of land revenue within the whole Gujarat State with head quarter at Ahmedabad.

By order and in the name of the Governor of Gujarat. K.D. Rathod, Section Officer.

38. It is evident from the notification adverted to that in empowering the Deputy Collector (Recovery) Section 19 of the Land Revenue Code, 1879 has been invoked. It is not as if the Deputy Collector (Recovery) is Deputy Collector for any area. It was freely conceded at the hearing that the Deputy Collector is not the Deputy Collector who functions as a revenue officer in respect of any area, but is one appointed as Deputy Collector (Recovery) to function in the office of the Gujarat State Financial Corporation for the purpose of the enactment. In other words it is not disputed that he is not a Deputy Collector in charge of the revenue administration of one more of the talukas in any district. No Collector has empowered him u/s 10 of the Bombay Land Revenue Code to be in charge of the revenue administration of any taluka. This fact is significant as we will presently show.

39. "Collector" is not a term defined in the Act. The Bombay General Clauses Act, 1904 provides, in Section 3 Clause (II) that in all Bombay Acts made after the commencement of the Bombay General Clauses Act I of 1904 the term

"Collector" shall mean, in the City of Bombay, the Collector of Bombay and elsewhere the Chief Officer in charge of the revenue administration of a district unless there is anything repugnant in the subject or context. Though the definition of the term "Collector" is absent in the Bombay Land Revenue Code, 1879 Section 8 of the Code provides for the Government appointing in each district an officer who shall be the Collector and who may exercise throughout his district all the powers and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by the Act or by any other law for the time being in force. Since the construction of the section is relevant for the purpose of this case we quote the section itself:

8. The State Government shall appoint in each district as officer who shall be the Collector and who may exercise, throughout his district, all powers and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of the State Government.

Section 3A deals with similar appointment of Additional Collectors and Section 9 deals with appointment of Deputy Collectors. Section 9 reads thus:

The State Government may appoint to each district so many Assistant Collectors, and so many Deputy Collectors as it may deem expedient; the Assistants shall be called "First", "Second", "Supernumerary" etc. as may be expressed to the order of their appointment,

All such Assistant and Deputy Collectors and all other officers employed in the land revenue administration of the District shall be subordinate to the Collector.

Section 10 defines the duties and powers of the officers so appointed. That provides:

10. Subject to the general orders of the State Government, a Collector may place any of his assistants or deputies in charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge:

Provided that the Collector, may whenever he may deem fit, direct any such Assistant or Deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other Assistant or Deputy subordinate to him. To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas the Collector shall, under the general orders of the State Government, assign such particular duties and powers as he may from time to time see fit.

One more section of the Act is of considerable relevance and that is Section 19 which enables the State Government to appoint one and the same person to any two or more offices provided for in Chapter II of the Code. That section reads:

19. It shall be lawful for the State Government to appoint one and the same person, being otherwise competent according to law, to any two or more of the officers provided for in this Chapter or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

We have already extracted the notification conferring certain powers and duties on the Deputy Collector (Recovery) u/s 19 of the Bombay Land Revenue Code. The power so conferred is not power exercisable in respect of a revenue district, but limited power of recovery of dues financed by the Gujarat State Financial Corporation and that within the whole Gujarat State with head-quarters at Ahmedabad. The short question is whether this notification is competent and operative in the manner assumed.

40. Two independent powers are conferred on the Government u/s 19 of the Bombay Land Revenue Code. The first of these is to appoint one and the same person to any two or more of the offices mentioned in Chapter II. The Deputy Collector may be appointed simultaneously as an Additional Collector or a District Collector. An Assistant Collector may be appointed simultaneously as a Deputy Collector or District Collector. All such appointments, if made, would be justifiable u/s 19. Upon such appointment of the same person to two or more offices he would become the occupant of those offices which would mean that in law he can exercise all powers of the holder of those offices. If on the other hand the State Government chooses to exercise the power contemplated under the latter part of Section 19 it would only be then conferring upon an officer of one denomination all or any of the powers and duties of any other officer or officers within certain local limits or otherwise. A Deputy Collector, in that event, may be conferred with any of the powers or duties of a Collector or of an Additional Collector. Those duties could be performed by him but he does not become the Collector or Additional Collector. He cannot exercise all the powers of the Collector or the Additional Collector as the case may be. He can exercise only such of those powers as are conferred on him provided those are powers conferrable on him. This distinction is quite important, for in the former case if a Deputy Collector is appointed to the office of Collector he has automatically all the powers of the Collector, but if only certain powers are conferred upon him which are powers of the Collector only those powers of the Collector could be exercised by him. The distinction becomes relevant when we turn to Section 8 of the Code. The Collector is one appointed in each district. This accords with the definition of "Collector" under the Bombay General Clauses Act. He exercises throughout his district all the powers and discharges all the duties conferred and imposed on a Collector or Assistant Collector or Deputy Collector by the Land Revenue Code. By virtue of his appointment as a Collector in respect of any district he is also

empowered to exercise the powers conferred on a Collector under "any other law for the time being in force" and has to discharge the duties imposed by "any other law for the time being in force". By virtue of this provision a Collector exercises not only the powers under the Land Revenue Code but any power envisaged by any other statute as exercisable by the Collector. It is this which enables the Collector to exercise powers u/s 3(2) of the Gujarat Public Moneys (Recovery of Dues) Act. 1079. But for this provision a Collector appointed under the Bombay Land Revenue Code may not be entitled to function u/s 3(2) because though the two statutes refer to Collector there is nothing to link them so as to enable the Collector contemplated u/s 8 to exercise the powers of the Collector under the Recovery Act. Section 8 having empowered the Collector appointed in each district to exercise the powers under the Land Revenue Code throughout his district or to exercise powers of Collector under any other law for the time being in force he would be entitled to act as a Collector, the significant point is that the power to act under any other law for the time being in force is a power of Collector. Hence if any person holding a revenue office has been appointed as a Collector u/s 8 it may be said that he is competent to exercise all powers including that under the Recovery Act. If he is not so appointed he does not become a Collector. If he does not become a Collector he cannot exercise powers conferred on a Collector under any other law. If he had been appointed under the first part of Section 19 as a Collector he could have exercised such powers. But if he is conferred only the powers and duties of a Collector for certain limited purpose he is not a Collector and if he is not a Collector he cannot exercise the power under some other law for the time being in force. The consequence is that the Deputy Collector (Recovery) is not entitled to exercise powers under the Recovery Act since he is not a Collector u/s 8 but only one on whom certain powers or duties are conferred. Consequently the Deputy Collector (Recovery) who has purported to act in all these cases is not competent to function u/s 3(2) of the Act as he purports to do.

41. Our attention has been drawn to an early decision of the High Court of Bombay in Vishnu Dadu Lokhande v. Umabai LVII Bombay Law Reporter 816. Though at first sight it may appear that the ratio of the case is of application here, on a close examination of the facts it would be quite evident that it is not so. Section 10 which we have extracted earlier enables a Deputy Collector placed in charge of the revenue administration of one or more of the talukas in the district of a Collector by the Collector, to perform the duties and exercise powers conferred upon a Collector by the Act, or any other law for the time being in force so far as regards the taluka or talukas in charge. It is the exercise of power under this provision that arose for consideration in the Bombay case and not any exercise of power by a Deputy Collector empowered u/s 19 of the Code. The question there was whether the District Deputy Collector was competent to hear the appeal against an order passed by the Mamlatdar u/s 24(2) of the Bombay Tenancy Act, 1939. This arose in the context of reversal by the Deputy Collector of an order of the Mamlatdar pursuant to which order possession of lands had

been restored to the landlord from the tenant. Pursuant to the Deputy Collector's decision reversing the Mamlatdar's decision the tenant sought restoration, this was challenged in a suit and it is in that context that the validity of the order of the Deputy Collector arose for consideration. The contention, was that the Deputy Collector should not have exercised the power of adjudication vested Collector. Referring to Section 10, the Court noticed that:

Once an Assistant or a Deputy Collector is by an order of the Collector put in charge of revenue administration of one or more talukas in his district, by the operation of the second paragraph of Section 10, he is subject to territorial limitations statutorily invested with all the powers which are conferred upon the Collector by the Code or by any other law for the time being in force and is entitled to exercise the powers of a Collector under the Code or by any other law for the time being in force.

The Court further noticed, that the Bombay Tenancy Act, 1939 was undoubtedly "any other law" in force within the meaning of Section 10. The Deputy Collector having been placed in charge of the Karad taluka by the Collector he was found to have jurisdiction u/s 10 to exercise the powers of a Collector to hear the appeal. Consequently the Court concluded:

the effect of Section 10, para 2, of the Bombay Land Revenue Code, is that the word "Collector" as used in Section 24 of the Bombay Tenancy Act must when the Assistant or Deputy exercises appellate powers be regarded as substituted by the expression Deputy Collector or the Assistant Collector.

The learned Advocate General who appeared for the State was laying considerable emphasis on this decision in support of his plea. We have noticed that this is of no relevance. That is because the question turned on an entirely different point. The case there concerned a Deputy Collector who had been placed in charge of a revenue administration of a certain area by the Collector. Section 10(2) empowered him thereupon to exercise all the powers of the Collector in relation to that area. We are not concerned here with any case of empowering a Deputy Collector in respect of an area nor of any exercise of power u/s 10. This is a case of empowering u/s 19 and the latter part of the section only enables exercise of powers conferred. Certainly such conferment must be taken as limited to the powers under the Act, particularly in the absence of any mention of exercise of powers conferred under any other Act. It is only by virtue of an officer being nominated as a Collector and a Collector being entitled to exercise powers under any other law for the time being in force by reason of Section 8 that if the first part of Section 19 had been invoked there would have been power. That being not the case Section 19 would be of no assistance and Section 10(2), as we have said, is inapplicable.

42. We notice that the decision of the Bombay High Court has been followed by the Gujarat High Court in *Khodidas Gcmgaram v. S.K. Chaudhri* XIIGLR 1029. That again is a case of exercise of power by a Deputy Collector who had been

placed in charge of revenue administration by a Collector in respect, of a specific area and who exercised the functions u/s 37(1) of the Bombay Land Revenue Code. For the reasons which we have indicated when adverting to the decision of the Bombay High Court the decision of the Gujarat High Court is also inapplicable to the facts of this case.

43. Bearing in mind that even on the submission of the teamed Advocate General Section 3(2) contemplates an adjudicatory function to be exercised by the Collector it is surprising that power u/s 19 of the Land Revenue Code should be exercised to authorise not only a Deputy Collector (Recovery) to exercise the functions of the Collector but even a Deputy Mamlatdar (Recovery) who is an officer of a very much lower rank to exercise the powers of the Collector in regard to recovery. Our attention has been drawn to notification of the Revenue Department, Sachivalaya, Gandhinagar dated 10th April, 1981, another notification of the 1st October, 1981 and yet another notification No. GHM/82/299/M-PWR-2182/159256-L dated 17th December, 1982, all of which empower Deputy Mamlatdar (Recovery) to exercise functions of a Collector in regard to recovery of dues to the Gujarat State Financial Corporation. This evidences the casual manner in which power has been conferred. In view of the decision that we have taken on the question of the Deputy Collector (Recovery) being, not empowered to exercise functions under the Recovery Act under the notification in force similar notifications in respect of Deputy Mamlatdars would not validly empower the Deputy Mamlatdars (Recovery) to act. Therefore it may not be necessary to go into the further question whether such adjudicatory powers could be delegated to a Deputy Mamlatdar (Recovery) who is no more than a Head clerk.

44. The position therefore is that in all cases where notices have been issued by the Deputy Collector (Recovery) u/s 3(2) the notices must be found to be incompetent and recovery without an adjudication as contemplated u/s 3(2) may not be legal or proper. That is the only which, in the circumstances of the case, the petitioners would be entitled to.

45. What we have said here with regard to the Gujarat State Financial Corporation would apply with equal force to loans advanced by the Gujarat Industrial Investment Corporation Limited which also is invoking the Recovery Act for recovery of its dues. The Gujarat Industrial Investment Corporation limited is a Government Company within the meaning, of Section 617 of the Companies Act, 1956. One of the objects of the Company is to establish and enhance the progress and pace of industrialisation in the State of Gujarat by providing credit and "financial assistance" to entrepreneurs. What we have said about the Corporation would apply with equal force to the Government Company, both of which are categories taken in under the provisions of the Recovery Act. Therefore we need not deal separately with the plea of legislative incompetence or the other peas in so far as the cases of loans advanced by the Gujarat Industrial Investment Corporation Limited. It is not disputed that the notification

similar to the one produced as Annexure II empowering the Deputy Collector (Recovery) in regard to Gujarat State Financial Corporation is issued in regard to the Gujarat Industrial Investment Corporation Limited and for the same reasons as stated earlier the Deputy Collector (Recovery) would not be competent to act by reason of power being conferred u/s 19 in the same terms as in the case of the Deputy Collector (Recovery) appointment with reference to the Gujarat State Financial Corporation. Hence would be identical.

46. The result is that in all these cases the, petitioners would not succeed in the challenge to the validity of Section 3 of the Gujarat Public Moneys (Recovery of Dues) Act, 1979. That section is held to be valid. Section 3(1) does not call for any notice prior to the issue of a certificate or any adjudication prior thereto. Section 3(2) is a provision which envisages such adjudication. That the Collector, on receiving the certificate, to make such enquiries as is in the circumstances of the case. The recovery can only be after consideration of the objections and an adjudication thereon, the result of which adjudication must necessarily be brought to the notice of the objectors. The Collector is empowered to make such enquiries to adjudicate and to proceed to recover the amount, but the Collector mentioned in Section 3(2) cannot be a Deputy Collector (Recovery) who exercises functions under the notifications now in force. Therefore all actions taken by the Deputy Collector as now empowered must come to an end and cannot be pursued. Hence all notices issued by Deputy Collector (Recovery) will stand quashed and all proceedings taken by him will stand abated. This does not preclude the State Government taking appropriate steps in accordance with law to enable appropriate power being exercised by the Collector contemplated u/s 3(2) of the Act.

The Special Civil Applications and the Appeal from Order are disposed of as above. Rule made absolute to the above extent. Parties will offer costs in all these cases.

In Special Civil Application No. 781 of 1981, under orders of the Court, the petitioner has made deposit in this Court. Whatever is so opposed may be paid over to the Gujarat State Financial Corporation towards the amount due from the petitioner to the Corporation. No such question arises in the other cases.